

DEC - 4 2014

FCC Mail Room

November 30, 2014

Achieve Telecom Network of MA. LLC  
WC Docket No. 02-06

VIA ELECTRONIC FILING

DOCKET FILE COPY ORIGINAL

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

This is a response by Achieve Telecom Network of MA. LLC ("Achieve") to a set of documents which the Wireline Competition Bureau of the Federal Communications Commission (the "WCB") provided to Achieve on August 5, 2014, with an invitation to comment. Achieve also received from the WCB a much larger set on October 28, 2014. On November 12, 2014, the WCB sent the August 5 set to Achieve a second time, with additional redactions performed by the WCB that did not appear in the August 5 package. The August 5, October 28, and November 12 sets are together referred to here as the "2014 Documents."

On June 25, 2010, Achieve filed a Consolidated Appeal of the Administrative Decisions of the Universal Service Administrative Company ("USAC") in CC Docket No.02-06 and CC Docket No. 96-45. The Administrative Decisions were dated April 26, 2010. Achieve's Appeal was filed almost four and a half years ago. The 2014 Documents were not part of the record of the Administrative Decisions and the Appeal. It is not clear to Achieve whether the WCB considers the 2014 Documents to be part of the record of the Appeal. Achieve is submitting this response and the documents attached to this submission while reserving its rights with regard to the treatment of the record in this case.

#### Achieve's Interaction with the School Districts

1. Achieve contracted for telecom services with the Brockton, Chelsea, Somerville and Springfield MA. School Districts. It did not (a) market itself as a no-cost service provider to the Districts, (b) offer the Districts a rebate of E-rate non-discounted contract costs, or (c) guarantee the Districts approval of grant requests to the United States Digital Learning Association ("USDLA") for the Districts' share of costs. See the affidavits of School District officials attached as Exhibits 12, 13, and 19 to the Consolidated Appeal and attached as Attachments A, B and C respectively. The affidavits are emphatic that Achieve did not engage in these acts. None of the 2014 Documents shows otherwise.

#### Competitive Bidding /Achieve's Contracts

2. Achieve was the only telecom service provider which bid in response to the School Districts' Form 470 Requests for Proposals. Achieve was a small provider and not a monopolist, and no other providers of any size chose to bid. The four School Districts contracted with Achieve under a Massachusetts State Master Contract and a Tariff approved by the Massachusetts Department of Telecommunications and Energy. USAC itself has recognized that "a state master contract is competitively bid." Achieve's winning bid pursuant to its State Master Contract and approved Tariff was competitive under

Massachusetts law and USAC's own guidance. There was no violation by Achieve of the E-rate program's competitive bidding requirements and none of the 2014 Documents shows otherwise. (See Attachment D to this submission, "Achieve's Massachusetts State Master Contract and Tariff, the USAC statement, and Related Materials")

#### Achieve and the Digital Divide Fund

3. Achieve contributed to the Adams Foundation. The Adams Foundation contributed to the Digital Divide Fund of the USDLA. Achieve also solicited and procured donations for the Digital Divide Fund from third parties, including entities associated with two minority unit-holders of Achieve. Achieve knew that third party contributions to the Digital Divide Fund solicited by Achieve were drawn on by USDLA to fund grants to E-rate applicants that had service contracts with Achieve. Achieve inquired from time to time as to amounts in the Digital Divide Fund and was advised by a staff member of USDLA of amounts in the Fund. USDLA and Achieve had an understanding that limited USDLA's administrative charges with regard to the Digital Divide Fund. Achieve also provided administrative assistance to USDLA in connection with the grant process to ensure grant procedures followed E-Rate program rules after the E-rate bidding process was completed and Achieve was selected as a service provider by the school districts. If there are any statements previously submitted which may be seen as inconsistent with the information in this paragraph, this information corrects those statements.

#### Approval of Grants

4. Achieve did not approve applications to USDLA for grants. Dr. John Flores, CEO of USDLA, reviewed and approved the grant requests. See Declaration of John Flores, Exhibit 6 to the Consolidated Appeal and attached as Attachment E. See also document # FCC 00126 of the 2014 Documents. In response to a subpoena from the Schools and Libraries Division, USDLA states that:

"The Chief Executive Officer, John Flores, was responsible for reviewing and approving each grant application. He reviewed each application for completeness and then conferred with the service provider to obtain the E-rate related funding information in order to verify the non-discounted amount for the Digital Divide Fund grant. He then sent an award letter setting forth the conditions of the award with an exhibit that specified the amount of the award."

See also Exhibits 15 and 12 of the Consolidated Appeal and attached as Attachment F, in which Dr. Flores informs the Chelsea School District that "our grant is to your school district and is not dependent upon your selection of any specific vendor" and in which officials of the Somerville, Springfield and Chelsea School Districts affirm that they were so informed and so understood.

None of the 2014 Documents shows that Achieve approved grant applications. Grant approvals were a decision of USDLA and were not dependent upon the selection of Achieve or any other specific vendor, as stated by Dr. Flores himself.



### No Rebates

5. Achieve did not guarantee grants to the School Districts or offer the Districts rebates in the form of grants. (See Section 1 above and documents cited there) Grants by USDLA to the School Districts were also not offers or promises of a rebate by Achieve or impermissible rebates-in-fact. A rebate-in-fact would have wrongly caused the E-rate program to pay 100% of a price which, excluding the portion covered by the grant, was the legitimate price. That did not happen here. Achieve's price pursuant to the State Master Contract and Tariff was not artificially inflated or illegitimate. It was a lawful price. Achieve's contracts with the School Districts were competitively bid and fairly won at that price. Funds raised by Achieve and others for the Digital Divide Fund were dispensed as grants to the School Districts by decision of USDLA to cover the Districts' share of that price. The grants did not render the price uncompetitive or unlawful. They could not have caused and did not cause an overcharge to the E-Rate program for the E-Rate portion of the price. E-Rate funds were not misspent. None of the 2014 Documents shows otherwise.

### The 2014 Documents/Unrefuted Facts

6. The Administrative Decisions were based upon an extremely limited evidentiary record which did not support the Decisions. The 2014 Documents are over 1600 in number. Yet this enlarged set can result in erroneous interpretations of documents. By way of example, please consider document marked # FCC 00097, an e-mail dated January 26, 2007, and compare it with earlier e-mails of January 9, 2007 attached to this submission as Attachment G. The latter are not part of the 2014 Documents. The Hartford Public Library System chose not to seek telecommunications services offered by Achieve but was interested in telecommunications equipment. Achieve encouraged the Library to seek a grant from USDLA to support a possible purchase of equipment and, given the Library's decision not to seek transmission services, informed a staff member of USDLA that a grant application for transmission services did not have to be sent to the Library. The January 9 e-mails, omitted from the 2014 Documents, explain the context in which the January 26 e-mail was written and prevent misinterpretation of its content and intent.

Even if the 2014 Documents did not create a risk of misinterpretation, they do not substantiate USAC's charges of wrongdoing by Achieve. The unrefuted evidence in this case shows that:

- Achieve did not market a no-cost service or guarantee grants to the School Districts;
- Achieve's price to the School Districts was a lawful price set by an approved Tariff and Master State Contract;
- The price was competitively bid in accordance with E-Rate procedures;
- Grants to the School Districts were approved by Dr. Flores as chief executive of USDLA;
- Grant approvals were not actions or decisions taken by Achieve;

- The grants covered the School Districts' share of a legitimate price; and
- The E-Rate program was not overcharged for its share.

Nothing in the record of the Administration Decisions or in the voluminous 2014 Documents contradicts these facts. They show that there was no economic abuse of the E-Rate program by Achieve. This should have been the conclusion reached by USAC in the Administrative Decisions.

Conclusion/Request For Relief

7. USAC's Administrative Decisions caused the ruination of Achieve's small business and deprived several of the poorest school districts in Massachusetts of a valuable and much needed educational service. As noted above, Achieve's Consolidated Appeal of those Decisions has been pending for nearly four and a half years. Achieve asks that the WCB now promptly act, grant Achieve's Appeal, and provide Achieve all the relief requested in that Appeal, including payment of all outstanding Achieve invoices that have been unpaid by the E-Rate program since September 8, 2008.

Respectfully submitted,



Joy Jackson  
President  
Achieve Telecom Network of MA, LLC

attachments

## **ATTACHMENT A**

## **EXHIBIT 12**



**AFFIDAVIT**

1. My name is Anne Thompson.
2. Presently, I am employed by Trinity Catholic Academy Brockton in the position of Technology Consultant.
3. From January of 1997 through January of 2007, I held the position of Technology Coordinator/director for the Brockton Public School District.
4. My responsibilities as Tech Director included the oversight of the process for preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"). In doing so I worked with an E-Rate Program consultant engaged by the District to help ensure that the District was in compliance with the rules and regulations that govern the E-Rate Program.
5. Consistent with my responsibilities, I participated in the District's application process for E-Rate Program support for Funding Year 2007-2008 relating to FCC Form 470 Application No.560310000617305 for certain eligible telecommunications services ("Application"). Part of that participation included meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed a written proposal submitted by Achieve in response to the Application. To my knowledge, Achieve was the only company to respond to our request for proposals for these services.
6. At all times we took necessary steps to comply, and I believe did comply, with all E-Rate Program rules and with any applicable state and local procurement rules.



I believe that we took all necessary steps to ensure that we conducted a fair and honest competitive bidding process. Achieve was an E-Rate approved provider of such services and was also approved by the Commonwealth of Massachusetts as a provider of such services.

7. At no time during any of my interactions with Achieve or any of its representatives was I ever informed of, made aware of, or otherwise led to believe or suspect that Achieve had any partnership or affiliation with United States Distance Learning Association ("USDLA"). In fact, even as of this date I am unaware of any partnership or affiliation between Achieve and USDLA except to the extent that I have been made aware that the same has been alleged by USAC in a Notification of Commitment Adjustment Letter.

8. Achieve did inform the District of the opportunity to apply for a grant from USDLA to cover the District's share of the cost of the services ("District Share") covered by the Application. Achieve also generally noted that there were other potential sources of such grants.

9. Achieve never represented, either orally or in writing in any way that it was offering a service that would be of "no cost" to the District. Achieve never represented, either orally or in writing, that if the District selected Achieve as its service provider and applied for a grant from USDLA that approval of the grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to the District.



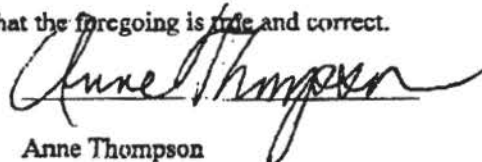
10. The District had sufficient funds in its overall technology budget to cover the District Share for its E-Rate Program supported services, including the service ultimately obtained from Achieve.

11. Again, Achieve was the only vendor to submit a bid or proposal in response to our RFP.

12. The District obtained, prepared and filed its own application with USDLA for a grant. Achieve was not involved in any way in the grant application process. District personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the grant. USDLA never indicated in any way that it was affiliated with or in partnership with Achieve.

13. Any partnership or affiliation between Achieve and USDLA, if any existed, existed without the knowledge of the District, and the District was unaware of any impact of such partnership or affiliation on the price of Achieve's services in its proposal, if any.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read "Anne Thompson", is written over a horizontal line.

Anne Thompson



**AFFIDAVIT**

1. My name is Daniel P. Vigeant.
2. Presently, I am employed by the Brockton Public School District (the "District") as the Director of Technology Services. My immediate predecessor was Anne Thompson.
3. My responsibilities as Director of Technology Services include oversight of programs benefiting from financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").
4. Consistent with my responsibilities, I have had the opportunity to meet and speak with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") the vendor that provides certain telecommunications services to the District resulting from FCC Form 470 Application No.560310000617305.
5. I am informed and believe that Achieve was at all times during which services have been provided by it to the District an E-Rate approved provider of such services and that Achieve was also approved by the Commonwealth of Massachusetts as a provider of such services.
6. At no time during any of my interactions with Achieve or any of its representatives was I ever informed of, made aware of, or otherwise led to believe or suspect that Achieve had any partnership or affiliation with United States Distance Learning Association ("USDLA"). In fact, even as of this date I am unaware of any partnership of affiliation between Achieve and USDLA except to the extent that I have

been made aware that the same has been alleged by USAC in a Notification of Commitment Adjustment Letter.

8. Achieve has never represented to me, either orally or in writing in any way that it was offering a service that would be of "no cost" to the District. Achieve has never represented to me, either orally or in writing, that if the District selected Achieve as its service provider and applied for a grant from USDLA that approval of the grant by USDLA was guaranteed.

9. Any partnership or affiliation between Achieve and USDLA, if any existed, or if any exists now, existed or exists without my knowledge and I believe without the knowledge of the District, and the District was unaware of any impact of such partnership or affiliation on the price of Achieve's services, if any.

10. I am informed and believe that the District has engaged in honest and open competitive bidding procedures in obtaining the services provided by Achieve; that Achieve was the only vendor that responded to the District's request for proposals for such services; and that the District is in no way responsible for or complicit in any wrongdoing which has been alleged to have occurred.

I declare under penalty of perjury that the foregoing is true and correct.



Daniel P. Vigeant

November 6, 2008



### DECLARATION STATEMENT

1. I, James Halloran was the Director of Information Technology for the City of Somerville, Somerville, Massachusetts ("Somerville"). I occupied the position from January, 2004 until March, 2007. My responsibilities with the Somerville included the oversight of the process of preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").
2. Consistent with my responsibilities, I participated in the Somerville's application process for E-Rate Program support for Funding Years 2005-2006 and 2006-2007 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). Part of that participation included, when necessary, meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed written proposals submitted by Achieve concerning its proposed services in response to the Applications. Pursuant to state and local procurement rules and E-Rate Program Rules, for each of the Funding Years in questions, Somerville chose Achieve to provide the digital transmission services. As required under E-Rate Program Rules, the Somerville timely submitted FCC Form 471 Nos. 2005-2006: 455467; 2006-2007: 516499 to USAC. USAC approved the E-Rate Program support by Funding Commitment Decisions Letters for Funding Requests Nos. 1257549 and 1421087, for 2005-2006 and 2006-2007 respectively (FDLS").
3. I have reviewed the both Notification of Commitment Adjustment Letters, dated January 14, 2009, whereby USAC has rescinded and seeks recovery of the support approved or provided

pursuant to the FCDL ("Decisions"). In particular, I have reviewed the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the Somerville's appeal of the Decisions.

4. Achieve's oral and written presentations to the Somerville in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the Somerville.

5. To the best of my knowledge and belief, Somerville was not aware of the existence of any partnership between Achieve and USDLA. To the best of my knowledge and belief, Somerville was unaware that Achieve allegedly solicited donations for USDLA.

6. To the best of my knowledge and belief, there was never an offer by Achieve to waive or otherwise not require payment of Somerville's Share. Nor did Achieve ever offer to rebate Somerville's Share.

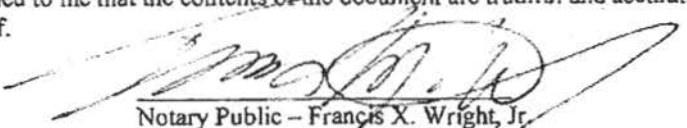
7. Somerville did not withhold information as to the application and award of the Grant from USDLA to cover Somerville's Share throughout all aspects of the E-Rate application process, selective review process, and service invoice processing.

I declare under penalty of perjury that the foregoing is true and correct on this 5th day of March, 2009.

  
James Halloran

Middlesex, ss.

On this 5th day of March, 2009, before me, the undersigned notary public, personally appeared James Halloran, who is personally known to me to be the person whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

  
Notary Public - Francis X. Wright, Jr.  
My commission expires: June 18, 2015

### DECLARATION STATEMENT

I, Kate Ashton am the Grants Administrator for the City of Somerville, Somerville, Massachusetts ("Somerville"). I have occupied the position since September, 2000. My responsibilities with the City of Somerville included participation in the process of preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"), as well as participation in the selective review process.

2. Consistent with my responsibilities, I participated in Somerville's application process for E-Rate Program support for Funding Years 2005-2006 and 2006-2007 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). My role in the 471 submissions to USAC for Long Distance Learning Services to be provided by Achieve subject to E-Rate approval was related to setting up and keeping files of the documents relating to the Achieve 471 submissions and assisting the City's E-Rate Administrative Authority in coordinating the E-Rate process with the E-Rate consultant. As required under E-Rate Program Rules, Somerville timely submitted FCC Form 471 Nos. 2005-2006: 455467; 2006-2007: 516499 to USAC. USAC approved the E-Rate Program support by Funding Commitment Decisions Letters for Funding Requests Nos. 1257549 and 1421087, for 2005-2006 and 2006-2007 respectively (FDLS").

3. I have reviewed both Notification of Commitment Adjustment Letters, dated January 14, 2009, whereby USAC has rescinded and seeks recovery of the support approved or provided pursuant to the FCDL ("Decisions"). In particular, I have reviewed



the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the Somerville's appeal of the Decisions.

4. I learned from School Personnel that there was an opportunity for the School District to apply for a grant to cover the District's share of the cost of the services ("Somerville Share") covered by the Applications ("Grant").

5. To the best of my knowledge and belief, Somerville was not aware of the existence of any partnership between Achieve and USDLA and was unaware that Achieve allegedly solicited donations for USDLA.

6. To the best of my knowledge and belief, there was never an offer by Achieve to waive or otherwise not require payment of Somerville School District's share. Nor to the best of my knowledge did Achieve ever offer to rebate the District's share.

7. My responsibilities with the City of Somerville included the oversight of the process of preparing, submitting and processing the Selective Review Process for the Schools and Libraries Division ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"), by and through Grant Thornton LLP for Funding Year 2006, as it related to the submissions of the billed entity, the Somerville School District.

8. Consistent with my responsibilities, as an administrator supporting the E-Rate Authorized Representative and working with the Authorized Representative, I compiled all necessary review material and provided all necessary documentation on behalf of the Somerville School District, as it related to the selective review process. The District disclosed the grant award from United States Distance Learning Association ("USDLA") in response to Item 10.4 of Attachment B., see Exhibit 1.

9. In its "Report of Independent Certified Public Accountant", dated July 15, Grant Thornton LLP 2008, which conducted the selective review, concluded that the Somerville School District complied with the requirements relative to disbursements of funds and its applications and service provider selections processes, see Exhibit 2.

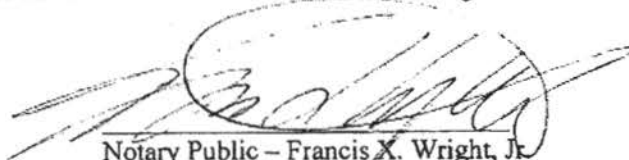
10. To the best of my knowledge the Somerville did not withhold information as to the application and award of the Grant from USDLA to cover the Somerville School District's share throughout all aspects of the E-Rate application process and selective review process.

I declare under penalty of perjury that the foregoing is true and correct on this 12th day of March, 2009.

Kate Ashton  
Kate Ashton

Middlesex, ss.

On this 12th day of March, 2009, before me, the undersigned notary public, personally appeared Kate Ashton, who is personally known to me to be the person whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.

  
Notary Public - Francis X. Wright, Jr.  
My commission expires: June 18, 2018

### DECLARATION STATEMENT

I, Joseph Mastrocola was the Coordinator of Instructional Technology for the City of Somerville School District, Somerville, Massachusetts ("Somerville"). I occupied the position during the time period at issue, until June 2006. My responsibilities with Somerville included assisting with the applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").

2. Consistent with my responsibilities, I participated in Somerville's application process for E-Rate Program support for Funding Years 2005-2006 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). I did not take part in the process for 2006-2007 because I had left my position with Somerville in June 2006. Part of my participation included, when necessary, meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed of written proposals submitted by Achieve concerning its proposed services in response to the Applications. Pursuant to state and local procurement rules and E-Rate Program Rules, for each of the Funding Years in questions, Somerville chose Achieve to provide the digital transmission services pursuant to the terms of a contract entered into by the City of Somerville and Achieve.. As required under E-Rate Program Rules, Somerville timely submitted FCC Form 471 No. 2005-2006: 455467; to USAC. USAC approved the E-Rate Program support by Funding Commitment Decisions Letter for Funding Requests No. 1257549 for 2005-2006 (FDLS").



3. I have reviewed the Notification of Commitment Adjustment Letters, dated January 14, 2009, whereby USAC has rescinded and seeks recovery of the support approved or provided pursuant to the FCDL ("Decisions"). In particular, I have reviewed the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the Somerville's appeal of the Decisions.

4. Achieve's oral and written presentations to Somerville in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the Somerville. Achieve did inform Somerville of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover Somerville's share of the cost of the services ("Somerville Share") covered by the Applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent, either orally or in writing to Somerville that if Somerville selected Achieve as its service provider and applied for such a Grant from USDLA, that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to Somerville. Furthermore, USDLA specified that the Grant awards were not contingent upon the selection of Achieve for the provision of services to the Somerville.

5. Somerville obtained, prepared and filed its own applications with USDLA for the Grants. Achieve was not involved in any way in the Grant application process. On behalf of Somerville I dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants.

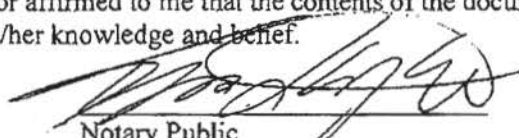
6. To the best of my knowledge and belief, Somerville was not aware of the existence of any partnership between Achieve and USDLA. To the best of my knowledge and belief, Somerville was unaware that Achieve allegedly solicited donations for USDLA.
7. To the best of my knowledge and belief, there was never an offer by Achieve to waive or otherwise not require payment of Somerville's Share. Nor did Achieve ever offer to rebate Somerville's Share.
8. Somerville did not withhold information as to the application and award of the Grant from USDLA to cover Somerville's Share throughout all aspects of the E-Rate application process, selective review process, and service invoice processing.

I declare under penalty of perjury that the foregoing is true and correct on this 6th day of March, 2009.

Essex  
Middlesex, ss.

  
Joseph Mastrocola

On this 6th day of March, 2009, before me, the undersigned notary public, personally appeared Joseph Mastrocola, proved to me through satisfactory evidence of identification, which was driver's license, to be the person whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

  
Notary Public  
My commission expires: June 15, 2015

Ex. A

### DECLARATION

1. I, Robert G. Hamel, was the Assistant to the Superintendent for the Springfield Public School District of Springfield, Massachusetts ("District"). I occupied that position from December, 1995 until January, 2008. My responsibilities with the District included the oversight of the process for preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").

2. Consistent with my responsibilities, I participated in the District's application process for E-Rate Program support for Funding Years 2004 through 2007 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). Part of that participation included, where necessary, meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed written proposals submitted by Achieve concerning its proposed services in response to the Applications. Pursuant to state and local procurement rules and E-Rate Program Rules, for each of the Funding Years in question, Springfield chose Achieve to provide the digital transmission services pursuant to the terms and conditions set forth in State Master Contract ITS07. As required under E-Rate Program rules, the District timely submitted FCC Form 471 Nos. 2004: 433768; 2005: 487623; 2006: 538332; 2007: 577110 to USAC. USAC approved the E-Rate Program support by Funding Commitment Decision Letters for Funding Request Nos. 1207981, 1352672; 1490940; and 1595241 for 2004, 2005, 2006 and 2007 respectively ("FCDLs")



3. I have reviewed the four (4) Notification of Commitment Adjustment Letters, dated September 8, 2008, whereby USAC has rescinded and seeks recovery of the support approved or provided pursuant the FCDL ("Decisions"). In particular, I have reviewed the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the District's appeal of the Decisions.

4. Achieve's oral and written presentations to the District in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the District. Achieve did inform the District of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover the District's share of the cost of the services ("District Share") covered by the Applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent, either orally or in writing to the District, that if the District selected Achieve as its service provider and applied for such a Grant from USDLA, that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposals made to the District. Furthermore, USDLA specified that the Grant awards were not contingent upon the selection of ACHIEVE for the provision of services to the District.

5. The District obtained, prepared and filed its own applications with USDLA for the Grants. Achieve was not involved in any way in the Grant application process. District personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants.

6. The District was not aware of the existence of any alleged partnership between ACHIEVE and USDLA. The District was also unaware of any donations solicited by ACHIEVE for USDLA.

7. There was never an offer by ACHIEVE to waive or otherwise not require payment of the District's Share. Nor did ACHIEVE ever offer to rebate the District's Share.

8. The District disclosed the application and award of the Grant from USDLA to cover the District's Share throughout all aspects of the E-Rate application process, selective review process, and service invoice processing.

I declare under penalty of perjury that the foregoing is true and correct on this 6<sup>th</sup> day of November, 2008.

  
Robert G. Hamel



STEPHANIE A. LIEBL  
Notary Public  
My Commission Expires October 22, 2010



City of Chelsea  
Law Department  
City Hall, 500 Broadway  
Chelsea, Massachusetts 02150

Telephone: (617) 466-4150  
Fax: (617) 466-4159

Cheryl Anne Watson  
City Solicitor  
[Cwatson@chelseama.gov](mailto:Cwatson@chelseama.gov)

Via Certified Receipt and First Class Mail

January 29, 2009

Letter of Appeal  
Schools and Libraries Division  
Dept. 125 – Correspondence Unit  
100 South Jefferson Road  
Whippany, NJ 07981

Re: Appeal of Funding Commitment Adjustment Report  
Form 471 Application Number: 502263 and 447884

To Whom It May Concern:

This is the Chelsea School District's (hereinafter "Chelsea") appeal of USAC's Determination that Chelsea violated the Schools and Libraries Program rules in Funding Years 2005 and 2006. Chelsea adamantly denies any wrongdoing and request that you review the appeal below and the attach documents and overturn your decision to rescind funding in full.

Chelsea asserts that it in no way violated any state or federal laws regarding competitive bidding. In fact, your notification fails to state evidence showing Chelsea in fact violated any rules. This appeal pertains to the following:

Billed Entity: 120548  
FCC Registration No.: D012041364  
Forms 471 Application Numbers: 447884 and 502263

Chelsea received with the Notification of Commitment Adjustment Letters for Funding Years 2005 and 2006 on or about January 14, 2009. The person you may discuss this appeal with is me, Cheryl Anne Watson, City Solicitor/School Counsel, City of Chelsea, City Hall, 500 Broadway, Chelsea, Massachusetts 02150, telephone 617-466-4150, facsimile 617-466-4159, email [cwatson@chelseama.gov](mailto:cwatson@chelseama.gov).

**FACTS:**

During the 2004-2005 school year, Chelsea began to explore options to implement a long distance learning option within its menu of course offerings. In the course of this process, for the school years 2005-2006 and 2006-2007, Chelsea entered into a contract with Achieve Telecom to provide long distance learning services and sought funds through the federal erate program and a private grant to pay for this service. Chelsea, in December of 2004 advertised for the long distance learning services using the form 470 process and



indicated in our bidding process that we were going to choose a vendor already approved by the Commonwealth of Massachusetts for these services. The Schools and Libraries Division of the Universal Service Administrative Company (SLD) is the federal agency that approved this service for the erate discount. The form 470 is an approved process by the SLD.

Chelsea also applied for and received a grant from the United States Distance Learning Association (USDLA) to pay for amounts due Achieve Telecom not covered by the erate discount. A summary of the source and use of funds is as follows:

School Year	Achieve Telecom cost of service	Portion funded through erate discount	Portion funded through USDLA grant
2005-2006	\$45,150	\$36,120	\$9,030
2006-2007	\$45,150	\$36,120	\$9,030

#### School Year 2005-2006

In mid December 2004, Chelsea advertised for responses to Form 470.

On December 20, 2004, Chelsea filed (posted) its Form 470 Form with the SLD [Attached as Exhibit A is Chelsea's Form 470]. Also on December 20, 2004, Achieve Telecom Network ("Achieve") filed its response to the 470 application with Chelsea [Attached as Exhibit B is Achieve's response]. Achieve was the only company to respond.

On February 8, 2005, Chelsea submitted its Form 471 application.

On June 27, 2005, Chelsea received notification from USDLA that it was approved for a grant for Chelsea's Digital Divide Project. In that letter there was no mention of the amount of the grant [Attached as Exhibit C is the June 27, 2005 letter from USDLA]. It should be noted that prior to applying for the USDLA grant Miguel Andreottola, Chelsea Public School's Technology Director, checked the SLD website for information and the guidelines.

On about July 26, 2005, Chelsea entered into a contract for services with Achieve. Chelsea had encumbered the funds for the contract [Attached as Exhibit D is the Contract between Chelsea and Achieve].

On August 31, 2005, Chelsea received a reaffirmation of the grant approved for three years from USDLA. In that letter, USDLA directs and informs Chelsea that all invoices should be sent to its vendor, Achieve [Attached as Exhibit E is the August 31, 2005 letter].

#### School Year 2006-2007<sup>1</sup>

<sup>1</sup> Copies of documents for School Year 1006 - 2007 are available upon request.



On December 8, 2005, Chelsea advertised for responses to Form 470. And on December 9, 2005, Achieve filed its response to the 470 application with Chelsea. Achieve was the only company to respond.

In early May, 2006, Chelsea submitted a letter to USDLA applying for the second year of the grant.

On about July 18, 2006, Chelsea extended the previous contract for services with Achieve. Chelsea had encumbered the funds for the contract.

On September 8, 2008, Chelsea received notification that SLD was requiring a response within a couple of weeks regarding Chelsea's compliance with the rules of the program. This notification informed us that SLD determined prior to sending us the notification that Achieve and other entities relied on USDLA grants [Attached as Exhibit F is the September 8, 2008 letter]. The letter then specifically inquires as to whether the Chelsea used the grants in funding years FY 2005 and FY 2006. Chelsea responded in the affirmative; Chelsea responded truthfully that it did use USDLA grant monies in FY 2005 and FY 2006.

#### **ARGUMENT:**

Chelsea asserts that it in no way violated any state or federal laws regarding competitive bidding. As the facts point out, and there are no facts stating the contrary, Chelsea followed all bidding requirements and did so for both Funding years. Chelsea has never stated that it relied on any information from Achieve regarding funding of their services.

- a. Chelsea has and had no knowledge of a relationship between Achieve and USDLA prior to the September 2008 notification.
- b. Chelsea has and had no knowledge of USDLA's process and determination of awarding funds. In fact, notification of the award informed Chelsea that it was not dependent upon a selection of any specific vendor. Chelsea relied on that statement.
- c. Achieve at no time indicated in their bid, which is attached as Exhibit B, an offer or guarantee of any grants or rebates for their service. Chelsea applied for such grant on its own prior to Achieve; during contract negotiations, mentioned that grant funding was available. If you review the contract with Achieve you will not find any offers or guarantee of grants or rebates.
- d. As to the September 8, 2008 notification, Chelsea did not admit or affirm that Chelsea relied on USDLA grants as a condition of agreeing to contract with Achieve. The answer to the trick question was based on the last sentence. Chelsea only answered in the affirmative that it received funding and used it for FY 2005 and FY 2006. Chelsea's contract with Achieve clearly shows that Chelsea was prepared to pay Achieve for the non-discounted share of the costs, whether or not we received a grant from USDLA.